

Export Controls and Interagency Roles

DOC's Bureau of Industry and Security (BIS)

All exporters must comply with U.S. export control regulations and have an understanding of which agency [DOC's BIS or the State Department's Directorate of Defense Trade Controls (DDTC)], has jurisdiction over the licensing for a given product or service. For more information, access to decision tree tools, guidance, and licensing regulations under *the Export Administration Regulation (EAR)*, go to the following link: <http://www.bis.doc.gov/>

All new exporters are strongly encouraged to attend training on export controls. **For more information on Export Controls/EAR training and a seminar schedule, go to the "Export Control Reform" icon in the main website listed above or go to the free [Online Training Room](#) to learn the *Essentials of Export Controls* and more.**

Export Controls and Export Control Reform (ECR)

The U.S. Government controls the export, re-export, and re-transfer of dual-use and defense articles through regulations administered by the Departments of Commerce and State Department. Commerce has responsibility for dual use items and defense items transferred over from State as part of the ECR effort under the 600-series. State licenses exports of all defense items that remain on the ITAR. Beginning October 15, 2013, thousands of items previously controlled on the United States Munitions List and subject to ITAR, which is administered by the U.S. Department of State, moved to the EAR, which are administered by the U.S. Department of Commerce. Most of the items that were moved were incorporated under the "600 series" on the [Commerce Control List \(CCL\)](#)—which is the heart of the EAR.

BIS regularly updates the exporting community, particularly through an annual "Update Conference on Export Controls and Policy". Most recently held in October 2016, these conferences give the exporting community the opportunity to learn first-hand from senior U.S. Government officials about current

export control policies, regulations and practices. Exporters are encouraged to attend future events. The [slide presentations from Update 2016 are available online via the BIS website](#) and provide excellent resources that answer many licensing and export control questions.

EAR Highlights

All articles classified under the EAR are assigned an [Export Classification Control Number \(ECCN\)](#). An ECCN is an alphanumeric code assigned to articles, technology and software by the Bureau of Industry and Security. Some items transferred to the CCL are classified under a "dual-use" ECCN if they are not specially designed for military use or also have a dual commercial or civil application. Both the ITAR and the EAR require that a company *self-determine or self-classify* where a product is categorized. If a company knows that its item is classified under the EAR, a company must determine its ECCN (see below). A company can self-classify or consult with an engineer or manufacturer of the item to properly classify the export. If the exporter is the manufacturer and is uncertain of the proper jurisdiction or classification, a company will want to consider filing for a commodity jurisdiction or a commodity classification, as described in the following sections.

Commodity Jurisdiction (CJ)

If a company is uncertain which organization has jurisdiction over an export (i.e. Commerce or State Department), the company should file for a *CJ under the authority of the Directorate of Defense Trade Controls (DDTC) at the State Department*. Only an appropriate export regulating authority can make "official determinations," regarding jurisdiction. All CJ requests must be submitted electronically using the DS-4076 Commodity Jurisdiction (CJ) Request Form (at no cost). [For instructions and commonly asked questions regarding the CJ process click here.](#)

With the number of CJs increasing rapidly, the licensing agencies are working to make the regulations clearer so that the areas of uncertainty between the United States Munitions List (USML)

and the CCL are reduced. The 2016 Update Conference addressed the issues during the “Mysteries of the CJ Process” panel. The CJ website page is being updated on an on-going basis to address changes, improve overall guidance on filing, expand the FAQs, fix precedent case snafus and add performance statistics. Additionally, a revised “go-live” CJ Form (DS-4076) was implemented in November 2016. Exporters are encouraged to read the Update Conference CJ presentation and follow updates on the CJ webpage.

Keep in mind that if an item is enumerated on the USML, there is no need to submit a CJ. However, if the item has or will have commercial application, then a CJ for review of the current controls would be appropriate.

Commodity Classification

If a company determines its product is classified under the EAR at Commerce but is still uncertain if it has been self-classified under the correct ECCN, a company can apply for a [Commodity Classification Request \(found under section 748.3 of the EAR\) at no cost or for further guidance click here.](#)

For additional information exporters should refer to the www.bis.doc website or can download [Chapter 732: Steps for using the EAR:](#)

- Supplement 1: Decision Trees
- Supplement 2: Am I subject to the EAR, and
- Supplement 3: BIS “Know your Customer” Guidance and Red Flags

Exporters are also encouraged to download chapter [736 – General Prohibitions](#) and check whether items 1-3 are applicable to each export sale.

How to Register/Submit a License at DOC

If an item is subject to the EAR (600-series, dual-use or commercial item) and requires a license, companies can register and submit an electronic application via **SNAP-R** (see main BIS website for training or instructions to open a new SNAP-R account) or contact the BIS Help desk at

snapr@bis.doc.gov or by calling the Help Desk at 202.482.2777.

Know Your Customer

Supplement 3 of the EAR provides guidance on ‘knowing your customer,’ and identifying ‘red flags’; e.g. *potentially denied parties* and those who cannot legally obtain U.S. licenses due to a potential violation. A violation could involve an individual(s) who has failed to correctly follow the EAR or other legal authority and has been determined by the USG to be acting contrary to the national security or foreign policy interests of the United States.

[The “Consolidated Screening List” \(CSL\)](#) is a summary of parties upon which the U.S. Government maintains restrictions for certain exports, re-exports or transfers, due to previous violations. The list is used as a tool to assist in *screening parties, and refers to a company, entity or a person*. The CSL search engine is a consolidation of screening lists updated by the *DOC, DOS, and the Treasury (under The Office of Foreign Assets (OFAC))*, all regulatory agencies involved in making rules on export controls and/or sanctions.

Depending on the sales cycle of an export, companies are strongly recommended to conduct a two-tier review to ensure no updates were missed. The list is updated continuously and should therefore be checked periodically. In addition to U.S. export control regulations, U.S. companies are strongly urged to remain current on restrictions impacting certain countries of destination and companies or individual entities of concern who are not authorized to export.

Embargoes and Other Export Restrictions

Companies should also be aware of which *countries* are under sanctions and/or export restrictions. Resources available include EAR country charts in supplement No. 1 to Part 738 and country groups found in Part 740. Countries subject to U.S. arms embargoes as identified through notices in the published Federal Register and drawn from [section 126.1 of the ITAR.](#)

Key Goals of Export Control Reform (ECR)

President Obama's key goals for export control reform included continuing to protect the country's most sensitive technologies while improving the ease of doing business for less sensitive military goods, as well as increasing overall interoperability with NATO and other close partners and allies. Another goal was to reduce the incentives for foreign companies to "design-out" or avoid U.S.-origin content, and to allow the U.S. Government to focus its resources on transactions of greater national security concern.

ECR Updates

As ECR progresses, the overall licensing burden for less sensitive U.S. origin defense parts and components has been reduced. Additional language on Category XII and EAR Bookend Rules were published on October 12, 2016 and become effective December 31, 2016. Category XII covers Control of Fire Control, Laser, Imaging, and Guidance and Control Equipment the President determines no longer warrant control under the United States Munitions List (USML).¹ In the June 3, 2016, edition of the Federal Register, The Department of Commerce published the final rule which included certain definitions that enhanced clarity and consistency with terms found in both the EAR and ITAR. Further questions about the rules can be addressed on the "[Reform](#)" link at [BIS.doc.gov](#).

Click below for links to the Commerce and State final rules:

Commerce final rule

<https://federalregister.gov/d/2016-27777>

State final rule

<https://federalregister.gov/d/2016-27775>

Many military aircraft parts, along with several other less sensitive defense articles, are now EAR controlled, thus enabling foreign customers to 'avoid the ITAR', as some prefer. In recent years, some

countries have avoided using ITAR-controlled products if a viable alternative exists.

Anyone wishing to learn about the latest changes to ECR and the EAR were historically able to join a weekly conference call, typically conducted by the Assistant Secretary for Export Administration. On Wednesday, November 23, 2016, the Assistant Secretary of Commerce for Export Administration, hosted the last call-in session of the Bureau of Industry and Security's highly successful ECR teleconference series. A complete list of revised USML-CCL categories and proposed and/or finalized rules can be found on the [ECR dashboard](#).

License Exceptions

Many 600 series items under the EAR have license exceptions available, unlike items controlled under the ITAR, that obviate the need for individual prior approvals from the U.S. Government for transactions that are eligible and meet certain requirements. A license exception is an authorization that allows a U.S. company to export or re-export, under stated conditions, items subject to the EAR that would otherwise require a license. The aerospace and defense industry benefits greatly from *the Strategic Trade Authorization (STA)* license exception, as a majority of aircraft parts and less significant military equipment exported to one of the NATO countries and other close allies may be eligible *to ship without a license*. For the list of the "36 STA" eligible countries under the 600-series, see Country Group [A: 5] in [Supplement No. 1 to Part 740](#) of the EAR. For more specific and detailed information on STA and other license exceptions and eligibility requirements, exporters should refer to Part 740 of the EAR.

For additional export control information and related resources, visit www.bis.doc.gov. To speak to an export counselor, call the Office of Exporter Services at (202)482-4811 in Washington, D.C.

¹ [70320 Federal Register/Vol. 81, No. 197/October 12, 2016/Rules and Regulations](#).

Department of State (DOS)

The Directorate of Defense Trade Controls (DDTC) website offers extensive information and guidance on the licensing regulations under the ITAR at the following link:

<http://www.pmdtcc.state.gov/index.html>.

How to Register/Submit a License at DOS

If a defense article or service is subject to the ITAR and requires a license, a company must submit an electronic application via DDTC's DTrade system. For instructions on how to register and submit a license at the DTrade Information Center, go to:

<http://www.pmdtcc.state.gov/DTRADE/index.html>

The Office of Regional Security and Arms Transfers (PM/RSAT)

PM/RSAT is responsible for ensuring that all FMS cases are properly reviewed for foreign policy and national security objectives. PM/RSAT is also responsible for adjudicating requests from divesting governments to transfer FMS-acquired defense articles to another government or entity. These requests are known as third party transfer (TPT) requests. PM/RSAT undertakes a thorough review of proposed FMS and TPT cases, to include a legal review, foreign policy considerations, and technology transfer issues. Further, PM/RSAT also applies the [Conventional Arms Transfer Policy \(CAT\)](#), as laid out in [Presidential Policy Directive 27](#).

Department of Defense (DOD)

The Defense Security Cooperation Agency (DSCA)

DSCA is the lead agency for the execution of Security Cooperation programs. DSCA has many roles and responsibilities in Security Cooperation, the foremost being to administer the FMS program for the Department of State including handling the Letter of Acceptance processing (LOA), managing trust funds, budget allocation, training and education, and more. As a reminder, "DSCA's new

Institute of Security Cooperation Studies (ISCS), effective 1 July, 2016, replaces DISAM. [ISCS provides education, research, and support in security assistance and cooperation.](#)"²

DSCA reported that FMS sales in fiscal year 2015 exceeded \$47 billion, making it the agency's biggest year yet, and continuing a long-term growth trend. FMS sales have progressively increased each year as DSCA processed \$34.2 billion in sales in 2014, up from \$27.8 billion in 2013. Questions not answered in this report regarding the FMS and other government-to-government arms transfers can be found on the Defense Security Cooperation Agency's (DSCA) website: <http://www.dsca.mil>.

Future Mission of DSCA/Resources

DSCA has embarked upon an ambitious effort to improve the FMS system through its "[Vision 2020](#)" initiative, and has already made changes to how FMS can be used by NATO countries that want to purchase defense systems as a group. For more information on this and other related activities, visit the DSCA website.

Defense Technology Security Administration (DTSA)

This organization establishes Department of Defense security policies related to international transfers of defense-related goods, services, and technologies. DTSA reviews and provides expert recommendations on foreign access to U.S. military technology as well as foreign purchases of American companies.

Additionally, DTSA works closely with both DOC and the State Department, and serves as a reviewing agency for dual-use commodities and munitions items and provides overall technical and policy assessments on export license applications. In accordance with Executive Order 11958, the State Department, with the concurrence of the Department of Defense, determines what commodities are covered by the USML. DTSA is the lead for DOD and receives all CJs staffed from

² For more information see <http://www.iscs.dsca.mil/>

DoS/DDTC. DTSA also reviews CCAT requests submitted by DOC. For more information see <http://www.dtsa.mil>.

Other Licensing Agencies

U.S. Department of Justice (DOJ)

While not the focus of this report, DOJ controls permanent imports of articles and services covered by the United States Munitions Import List, (USMIL) from foreign countries by persons subject to U.S. jurisdiction. (The State Department holds jurisdiction over temporary imports of defense articles returned to the United States for repair). The DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulates the permanent import of weapons, ammunition and "implements" of war. For more information go to the following website: <http://www.atf.gov>.

Department of the Treasury

The Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Some of the lists include the Foreign Sanctions Evaders (FSE) list, the Specially Designated Nationals List (SDN), and the Blocked Persons list. Go to [OFAC's Resource Center](#) to view a complete list.